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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/695,228	10/25/2000	Paul D. Marko	40554	2889

7590

11/28/2005

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EXAMINER

TRAN, HAI V

ART UNIT

PAPER NUMBER

2611

DATE MAILED: 11/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/695,228

Applicant(s)

MARKO ET AL.

Examiner

Hai Tran

Art Unit

2611

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-21.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

HAI TRAN

PRIMARY EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues, "The Office action apparently analogizes packets in a transport stream of Foster et al. to be data files as claimed and bytes in those packets to be segments as claimed. This is incorrect since the bytes of a packet are not interspersed in the transport stream of Foster, in contrast to segments of data file recited in claim 1 being interspersed in a broadcast signal."

In response, the Examiner respectfully disagrees with Applicant because Applicant's claim limitations do not specifically describe/claim how the segments are interspersed in the broadcast signal. Since, Foster discloses in Fig. 2, el. 212 that packets video and audio are interspersed, and thus bytes of packets video and audio are interspersed in the broadcast signal, as claimed.

Applicant further argues, "Secondly, the buffers 222A and 222V in Foster et al do not monitor progress of storage of bytes in a particular packet, nor even the progress of storing packets. Mere sizing of a buffer to control when it is filled and when it is read from does not constitute monitoring progress of reception of bytes associated with a packets."

In response, the Examiner respectfully disagrees with Applicant because nowhere in the (Final) Office Action, the Examiner indicates that buffers 222A and 222V monitor progress of storage of bytes in a particular packet, or monitor the progress of storing packets. The Examiner indicates that monitoring the progress of storing packets is done by Foster's receiving device using algorithm of Fig. 3 and moreover the Examiner cites Col. 8, lines 14-35 in which the monitoring process is done by counting until the full total data (block) size has been accumulated.

Applicant further argues, "...there is no disclosure or suggestion in Foster et al. of a file being segmented into a plurality of packets, and a header being provided in the transport stream to indicate the number of packets that constitute the file. The headers of the transport stream packets of Foster et al. merely identify the type of data (e.g., audio or video) in the packet, but do not relate the packets to others that constitute a data file, unlike the claimed segment and header."

In response, quite contrary to Applicant assertion, Foster discloses content/transport stream 210 comprising/including data files/packets of 188 bytes (packet being partitioned into 188 bytes). Foster's transport stream being provided with (at least one header) a header of four bytes (Col. 5, lines 43-46) and the header of the respective packet comprising information indicating the number of segments/bytes, i.e., 188bytes that constitute the data files/packets. (Notes, Applicant's claim 1 limitation "...said broadcast signal being provided with at least one header comprising information indicating the number of said segments that constitute at least one of said data files and information to identify each of said segments;" could be broadly interpreted as "...said broadcast signal being provided with at least one header comprising information indicating the number of said segments that constitute said data files OR information to identify each of said segments"; as such, Foster meets the claimed limitation, as analyzed).

Claims 9 and 18, Applicant further argues, "Foster et al. does not teach or suggest the STB determining which packets or bytes in packets have not been received. The text at col. 5, lines 43-67 of Foster merely states that the transport packets are received in order, and silent as to what happens if a transport packet is dropped."

In response, the examiner respectfully disagrees with Applicant because as admitted by applicant that Foster's transport packets are received in order; therefore, Foster's receiver, inherently able to determine which packets have not been received by looping (loop 380 of fig. 3) until the total data size of buffered data is reached (Col. 6, lines 50-Col. 7, lines 18).

As to Applicant argument, "... silent as to what happens if a transport packet is dropped", the Examiner notes; however, this argument does not recite in claims 9 and 18; thus, it is moot.

Applicant's remark toward Rieger, Morrison and Wolzien is noted; However, Foster meets all limitations in base claims, as discussed above, thus the basis rejection of dependent claims toward Rieger, Morrison and Wolzien under 35USC§103 is maintained as set forth the previous (Final) office action.



HAI TRAN
PRIMARY EXAMINER